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Michael Neal

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EXAMINER

NELSON, FREDA ANN

ART UNIT

PAPER NUMBER

3628

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

The amendment received on August 11, 2008 is acknowledged and entered. Claims 1 and 10-11 have been amended. Claim 20 is canceled. Claims 21-32 have been added. Claims 1-19 and 21-28 are currently pending.

Response to Amendments and Arguments

Applicant's arguments filed Aug 11, 2008 have been fully considered but they are not persuasive.

In response to Applicant's argument that in regards claims 1 and 10, the amendments resolve the claims belonging to a single statutory class, the Examiner respectfully disagrees because the claims begin by discussing a computer environment (ex. preamble of claim 1), the body of the claim discusses the specifics of the computer readable code (see above rejection of claims under 35 USC 112, second paragraph, for specific details regarding this issue).

Claim Rejections - 35 USC § 101

35 U.S.C. § 101 reads as follows:

"Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title".

1. Claims 1, 10, and 21-26 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

35 USC 101 requires that in order to be patentable the invention must be a "new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof" (emphasis added). Applicant's claims mentioned above are intended to embrace or overlap two different statutory classes of invention as set forth in 35 USC 101. The claims begin by discussing a computer environment (ex. preamble of claim 1), the body of the claim discusses the specifics of the computer readable code (see above rejection of claims under 35 USC 112, second paragraph, for specific details regarding this issue). "A claim of this type is precluded by the express language of 35 USC 101 which is drafted so as to set forth the statutory classes of invention in the alternative only", Ex parte Lyell (17 USPQ2d 1548).

2. As per claims 1, 10, and 21-26 the claims as recited appear to be directed to data structure, logic, or software for a computer. Thus, the claims are directed to functional descriptive material that is not functionally or structurally interrelated to any medium. *Data structures not claimed **as embodied on statutory computer readable media** (i.e., storage media, and excluding non-statutory media such as carrier waves) are descriptive material per se and therefore not patentable subject matter under § 101 as they are neither a process, a machine, a manufacture, nor a composition of matter. MPEP § 2106 IV.(g)(1)(a).*

3. Claims 11, 19, and 27-32 are directed to a series of steps. In order for a series of steps to be considered a proper process under § 101, a claimed process must either: (1) be tied to another statutory class (such as a particular apparatus) or (2) transform

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underlying subject matter (such as an article or materials). *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972). Thus, to qualify as patent eligible, these processes must positively recite the other statutory class to which it is tied (e.g., by identifying the apparatus that accomplishes the method steps), or positively recite the subject matter that is being transformed (e.g., by identifying the product or material that is changed to a different state). Claims 11, 19, and 27-32 identify neither the apparatus performing the recited steps nor any transformation of underlying materials, and accordingly are directed to non-statutory subject matter.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FRED A. NELSON whose telephone number is (571) 272-7076. The examiner can normally be reached on Monday -Wednesday and Friday, 10:00 AM -6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Freda A Nelson/
Examiner, Art Unit 3628
3/3/08

/John W Hayes/
Supervisory Patent Examiner, Art Unit 3628